



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 20, 2008

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Response To The Report Of The 2007-2008 Santa Barbara County Civil Grand Jury Entitled "Medical Marijuana Dispensaries: A Time For Regulation"

RECOMMENDATION:

That Council authorize the Community Development Director to provide the City Council's Response to the report of the 2007-2008 Santa Barbara County Civil Grand Jury entitled, "Medical Marijuana Dispensaries: A Time for Regulation."

DISCUSSION:

State Penal Code Section 933(c) requires that the "governing body" of each public agency which is the subject of a report from the county civil grand jury comment on those findings and recommendations contained in the report which are relevant to that particular public agency.

Attached is the proposed response to the Santa Barbara County Civil Grand Jury report concerning "Medical Marijuana Dispensaries: A Time for Regulation." The recommended Council action would authorize the Community Development Director to send the attached cover letter and the required more detailed Grand Jury response attached to it.

ATTACHMENT: Letter to Santa Barbara County Civil Grand Jury with attached response to the Report of the 2007-2008 Santa Barbara County Civil Grand Jury Entitled, "Medical Marijuana Dispensaries: A Time for Regulation"

PREPARED BY: Danny Kato, Senior Planner II

SUBMITTED BY: Dave Gustafson, Acting Community Development Director

APPROVED BY: City Administrator's Office

May 20, 2008

The Honorable J. William McLafferty
Presiding Judge, Superior Court
County of Santa Barbara
1100 Anacapa Street, 2nd Floor
Santa Barbara, California 93101

County Civil Grand Jury,
Attention: Foreman Ted Sten
1100 Anacapa Street
Santa Barbara, California 93101

Dear Honorable McLafferty:

This letter is in response to the Civil Grand Jury's letter to David Gustafson, Acting Community Development Director dated March 11, 2008, requesting a response to its 2007-2008 report entitled *Medical Marijuana Dispensaries: A Time for Regulation*. The response is provided pursuant to the requirements of state Penal Code Section 933(c).

We have enclosed with this letter the detailed response to the findings and recommendations contained in that report as approved by the Santa Barbara City Council at its regular meeting of May 20, 2008. The Grand Jury Report requests a response from the City of Santa Barbara. This response constitutes the reply of both the City Council and the Community Development Department.

Please feel free to contact us and/or Santa Barbara City Attorney Stephen Wiley, should you have any questions concerning the City's response or if you need anything further from the City.

Yours truly,

David Gustafson
Acting Community Development Director

Enclosure

Cc: Mayor Marty Blum
James L. Armstrong, City Administrator
Stephen P. Wiley, City Attorney
Cam Sanchez, Police Chief
City Clerk Cyndi Rodriguez

**Medical Marijuana
Grand Jury Report – Responses
May 20, 2008**

- 1) **Finding 1:** The only regulation of medical dispensaries by the City of Santa Barbara is a business license.
 - a) **Response:** This finding is not correct and the City of Santa Barbara disagrees with this finding. The City's Zoning Ordinance (SBMC Title 28) restricts legally permitted businesses to locations within certain commercial zones and these zoning restrictions have always applied to a medical marijuana dispensary business. In addition, on October 4, 2007, the City Council adopted an Interim Ordinance relating to medical marijuana dispensaries (Ordinance No. 5436) that required the following of all dispensaries: 1) those which were not in operation on August 14, 2007 and 2) did not have a valid Business Tax Certificate on August 14, 2007, cease operation. The Interim Ordinance did not place any operational or location restrictions on existing dispensaries beyond those established in SBMC Title 28. Additionally, the City Council adopted a comprehensive Medical Cannabis Dispensary Ordinance on March 25, 2008. New medical cannabis dispensaries must comply with this ordinance. Existing dispensaries that are permitted under the Interim Ordinance are allowed to remain in place up to three years from the date of the adoption. Existing dispensaries that are not permitted under the Interim Ordinance must cease their operations. The City Attorney's Office is enforcing both ordinances.
- 2) **Recommendation 1:** The Santa Barbara City Council should adopt a permanent medical marijuana ordinance, which as a minimum requires a Dispensary Use permit (DUP) that would be renewed on a regular basis. This ordinance should require fingerprinting, photographing, and background checks of operators, as well as inventory and sales audits.
 - a) **Response:** The recommendation has been implemented in part. As stated above, the City's Medical Cannabis Dispensary Ordinance was adopted on March 25, 2008. The Ordinance requires that dispensaries obtain a Performance Standard Permit, which entails a public hearing by the Staff Hearing Officer. The Ordinance contains a large number of locational and operational requirements. For example, under the Ordinance dispensary owners and employees may not be convicted felons, and that they may not be on probation or parole for the sale or distribution of a controlled substance.

The issue of periodic renewal was discussed at length among Staff, the Ordinance Committee and the Council. The adopted Ordinance does not require periodic permit renewals. Once approved, dispensaries can remain permitted as long as the ownership is not transferred and location remains the same. However, dispensaries that do not comply with the operational requirements can have their permit suspended or revoked through a public hearing process. Sales and inventory audits are not required by the Ordinance since local restrictions of the amount of medical marijuana which may be possessed and distributed to qualified patients is expressly and preemptively regulated by the state Health and Safety Code.

- 3) **Finding 2:** Patients can have a single marijuana recommendation filled by more than one dispensary.
- a) **Response:** The City agrees with this finding. However, this is also a matter which relates to state medical marijuana statutes and not to local dispensary zoning ordinances.
- 4) **Recommendation 2:** The City of Santa Barbara should establish a secure central database which insures patients do not abuse their recommendations, while protecting their privacy.
- a) **Response:** The recommendation will not be implemented. Currently, the dispensing of medical marijuana to patients is regulated by the state Health and Safety Code. Consequently, it is not the City's appropriate authority under state medical marijuana laws to establish or maintain a database. The purpose of the City's Ordinance is to ensure dispensaries are good neighbors from a zoning and land-use standpoint.
- 5) **Finding 3:** There is increased criminal activity around medical marijuana dispensaries.
- a) **Response:** The City partially disagrees with this finding. Police Department records indicate that since the Drug Enforcement Administration (DEA) activity in October 2007, there have only been 1-2 complaints of criminal activity around the dispensaries at 331 N. Milpas (currently closed), 1437 San Andres, and 3516 State. Prior to the DEA's activity, there were a large number of complaints, mostly related to 211 W. Victoria (closed since October 2007) and 331 N. Milpas.
- 6) **Recommendation 3:** The City of Santa Barbara should include a requirement in the Dispensary Use Permit (DUP) that dispensaries take measures to ensure the safety of patients both inside and outside the dispensaries.
- a) **Response:** The recommendation has been implemented with the City's recent Ordinance. The permanent Medical Cannabis Ordinance has a number of operational requirements designed to ensure the safety of patients both inside and outside the dispensaries. Examples include: entrance area strictly controlled with video cameras installed; consumption is prohibited on site, except that employees who are patients may orally consume (eat) cannabis products; retail sales are limited; floor plans must include a waiting area, and a separate, secure area for dispensing medical cannabis; locked storage is required; a security plan is required; security cameras and alarm systems are required; employee records must be kept; operators are required to discourage and correct objectionable conditions nearby, reduce loitering, give patients a list of rules and regulations governing medical cannabis use and consumption within the City, keep sidewalks clear of litter, remove graffiti within 72 hours, and dispensaries are not allowed to sell alcoholic beverages.
- 7) **Finding 4:** There are no health or safety standards in place which regulate the quality of marijuana sold at dispensaries.
- a) **Response to Finding 4:** The City of Santa Barbara agrees with this finding, but believes that this is a matter for the State Legislature to address.